

Approved 5/4/06

TOWN OF CUSHING
PLANNING BOARD
Minutes of Meeting
April 5, 2006

Board Present: Bob Ellis, Evelyn Kalloch, Arthur Kiskila, Frank Muddle, Dan Remian, CEO Scott Bickford and Secretary Deborah Sealey

Board Absent: None

1. Call to Order: Chairman Remian called the meeting to order at 7:00 pm. A roll call was taken and the new chairman thanked Mike Roberts for his time on the PB; he asked Mrs. Kalloch to send a thank you note to Mr. Roberts. Mr. Remian then requested an agenda change so that Robert Lynde's application could be considered first since he was traveling by boat.

ACTION: Mrs. Kalloch made a motion, seconded by Mr. Ellis, to approve the agenda change.
Carried 5-0-0

2. Minutes of 3/1/06:

ACTION: Mr. Ellis made a motion, seconded by Mrs. Kalloch, to accept the minutes of the 3/1/06 meeting.
Carried 4-0-1 (Mr. Muddle abstained)

Cliff Goodall, attorney for James Tower, asked if his client's amendment application would be addressed under old business. After ascertaining that Mr. Goodall was referring to the amendment to Meduncook Plantation Lot 26, Mr. Remian said the PB was still waiting for Mr. Tower's approval to hire a surveyor to delineate Resource Protection [RP] at the site. Mr. Tower responded that he thought that was a moot point and wanted to discuss it with the Board. Mr. Ellis said he was unaware this had been submitted for the agenda.

Mr. Remian formally submitted the minutes of the 3/9/06 site walk of Mr. Tower's property into the record.

3. Consider resubmitted Application of Building Permit for a home on Gay Island, Map 7, Lot 2A, by Robert Lynde, Jr.: Mr. Lynde said he had a permit to build a house on Gay Island but thought it might have expired. Mr. Lynde provided a drawing of the house and said there would eventually be two identical houses, one on each lot. At the present his son wanted to build on Lot 2A (83C-2A), which had a setback of 140'. Mr. Ellis said the setback should be noted on the plan the PB signed.

Mr. Lynde unrolled the plans for the subdivision, noting a stipulation that he could not sell a lot until the fire pond was in. He said he had not sold a lot but had given one to his son. Mr. Remian said he felt the CEO could reissue Mr. Lynde's permit. CEO Bickford reminded Mr. Lynde that his septic system permit was due to expire in June 2006.

ACTION: Mr. Remian made a motion, seconded by Mr. Ellis, to have CEO Bickford reissue this permit.
Carried 5-0-0

4. Consider final Ogilvie Gay Island Subdivision plan submitted by John Mathieson, Surveyor, Map 7, Lot 85: Mr. Remian stated that the PB was reviewing Mrs. Ogilvie's application for completeness. Mr. Mathieson explained that he had discussed requested changes with both Mr. Remian and CEO Bickford. He then reviewed each change that had been made. The title name ("Elisabeth Ogilvie Gay Island Properties Subdivision") on the plan and in the application now matched. The mention of individual privies was removed from the plan notes and replaced by the words "septic sites by Doug Merservey and designed on HH200 forms"; the forms were identified by lot and submitted. Test pits were also identified for each lot. Subdivision boundary lines had been made heavier for easier identification in two places on the shoreline.

Mr. Mathieson said Mr. Ellis had commented on the Flood Plain Zone VE17, on the southeast shore, that was now properly referenced as a RP area. Mr. Ellis said he still did not see a line delineating the area, which was required

by the regulations; he was concerned that the 17' elevation put the existing camp within RP, rendering it non-conforming. Mr. Mathieson said Mr. Ellis was really asking for a flood elevation certificate, which would require his bringing in a benchmark and shooting topo in the area; this would put a burden on his client. He said the structure existed and he felt it would be an issue only for insurance purposes. Mr. Ellis asked if the VE17 line, if depicted, might differ from the 17' contour line. Mr. Mathieson replied that the VE17 would be roughly on the contour line but the cottage, because it was on piers, might not be in the flood zone. He said a flood elevation certificate would be required if anyone wanted to renovate the cottage. CEO Bickford referred the Board to Page 11, which discussed the flood areas based on FEMA boundaries on maps. Mr. Ellis said it was asking to determine the flood elevation and flood hazard boundaries within the subdivision. Chairman Remian said he felt a note on the plan should suffice. Mr. Mathieson said he would have to do a flood elevation certificate, which was not called for unless there were additions to the building, in order to put a note on the plan.

Randall Watkinson, attorney to Elisabeth Ogilvie, said he was concerned that any information noted in respect to the flood hazard zone be dated, since that zone could change. Mr. Remian said a note saying there were flood plain areas should be sufficient and the Board agreed. Mr. Bickford stated that Note 3 said there were no improvements within the flood plain, which might suggest the elevation had been shot; the CEO suggested the reference to improvements be removed. Mr. Mathieson agreed and said he would remove "none of the improvements in the subdivision zone are within the flood plain" and then add, "flood plain elevations are noted on the plan." Mr. Bickford suggested Mr. Mathieson look carefully at Subsection 7.13, which clearly stated what should be on the plan.

Mr. Watkinson said there would not be an exchange of deeds between Tides Way, LLC, and Ms. Ogilvie. He said her office lot, which was held out when she conveyed land to Tides Way, had defined boundaries. He clarified that the subdivision application was for the lot to the east, where there was no boundary issue. Mrs. Kalloch asked about the December transfer to Lucas and Lowery. Mr. Watkinson said that was a transfer to an abutter and was not within the subdivision.

Mr. Mathieson stated that a note concerning residential zoning had been added to the plan. He said the Board had requested the following note be added: "No new roads are to be built without Planning Board approval"; however, Mr. Mathieson said Mr. Watkinson had sent a more extensive draft to Town Attorney Cunningham and he read this aloud. He then listed some other notes he had added. Mr. Remian asked Mr. Watkinson if he and Mr. Cunningham were happy with the notes. Mr. Watkinson thought saying all conditions must be consistent with the conditions of the covenants was unnecessary since they were part of the approval. Mr. Bickford asked to see Mr. Cunningham's response to Mr. Watkinson's email and said he agreed about the covenants.

Mr. Remian led a review of the subdivision regulations to check for completeness of the application. He said the Board would need eight copies of the application and related documents for the next meeting, as well as three copies plus one Mylar of the plans. Mr. Ellis asked that the test pits should be referenced by lot number. Chairman Remian confirmed with Fire Chief Kiskila that he was happy with the fire protection. Mr. Remian said he felt the application was complete for a final review at the next meeting. Mrs. Kalloch questioned the need for eight application copies, since the members already had them, and Mr. Remian said four copies of the plan would be sufficient.

ACTION: Mr. Ellis made a motion, seconded by Mr. Kiskila, to accept the application as complete.
Carried 5-0-0

5. Consider final Chickadee Drive Development Subdivision plan submitted by Dwayne and Dale Prior, Map

1, Lot 10: Dale and Dwayne Prior represented their application before the PB. Mr. Remian said the surveyor's letter stated that the turnaround was a cul-de-sac, rather than a hammerhead. Dale Prior disagreed, saying it was a hammerhead. Mr. Remian asked him why it could not be a cul-de-sac. Mr. Prior replied that they did not want to encroach further on the wetlands by using a cul-de-sac. Mr. Remian said the surveyor called it a cul-de-sac and Mr. Prior said it would be a T-turn and didn't know why the surveyor used the other term. Mr. Ellis read from the minutes of a previous meeting at which the PB asked for a letter from the surveyor stating why a cul-de-sac was not appropriate. Mr. Prior said he wanted a hammerhead and could have the surveyor change his wording. Mr. Remian stated there was room for either configuration and Mr. Ellis added that ordinance subsection 9.2 allowed for less frontage with a cul-de-sac, which would not require a waiver. The Priors agreed to make a cul-de-sac at both ends of the road.

Mr. Remian asked their intentions for the wetlands. Dale Prior said they would not be disturbing the wetlands and said there was plenty of room for a house outside the wetlands. Mr. Remian asked for a note stating that the

wetlands would remain in their natural state. Dwayne Prior said he thought that was unnecessary because the allowed footage was already noted, but Mr. Remian said he wanted it to be clear that no more wetlands could be disturbed. The Board decided that the conditions had already been met and an additional note was not necessary. Mr. Ellis noted that the wording "Prior pond" on the notes should read, "fire pond."

Mr. Ellis said the turnarounds were depicted as hammerheads instead of cul-de-sacs on the Mylars. Mr. Remian asked the Priors to correct the Mylars to show cul-de-sacs and the fire pond correction. He said the Board would sign the corrected Mylars after the Priors delivered them to the Town Office. Mr. Bickford said he would need 2 paper and 2 Mylar copies of the plan.

ACTION: Mr. Ellis made a motion, seconded by Mrs. Kalloch, to approve the plan contingent on the hammerheads being changed to cul-de-sacs and the fire pond typo correction; the plans would be signed when submitted to the Town Office.
Carried 4-0-1 (Mr. Muddle abstained)

6. Old Business: (not on the agenda) James Tower Discussion of Amendment to Add Lot #26 to Meduncook Plantation Subdivision: Mr. Tower gave his usual introduction and said he had provided a profile of the proposed roadway to Lot 26 at a previous meeting. He said the Board had asked him, at a February meeting, to bring a letter from a registered surveyor certifying that the topographical data points used to create that profile were accurate. He said he had submitted that letter. At a later proceeding and unbeknownst to him, Mr. Tower said, an alternate plan developed: to hire a third party independent surveyor to gather additional topographical data points. For that purpose, Mr. Bickford had solicited a proposal from Gartley & Dorsky Engineering and Surveying. During discussions at the last meeting, Mr. Tower said, the discussion concerned a site visit and no determination was made as to an independent survey. In the meantime, he said, he provided the Board with a copy of the Table of Uses from The Shoreland Zone ordinance with reference to the construction of roads and driveways in Resource Protection [RP] zones. Mr. Tower said the Table of Uses referred to Note 7, which he paraphrased to say that when no reasonable alternative existed the PB would grant a permit for construction of a roadway through a RP zone. Mr. Tower said it was his interpretation that the PB was obligated to grant a permit if the criteria were met and, in that case, he asked, what was the value of determining if the road was in a RP? He said he had the right to put the road in that particular location whether or not it was a RP zone.

Mr. Ellis said the PB's decision regarding an independent surveyor was not unbeknownst to Mr. Tower since he had been present at the 2/1/06 meeting when a motion to have Mr. Tower hire such a surveyor had unanimously carried. Mr. Tower agreed the Board action was clearly known to him, but the shift in the Board's position occurred between meetings, he said. Mr. Ellis disagreed, saying the shift occurred at the meeting. Mr. Tower said when he left the meeting (prior to the 2/1/06 meeting) at which he had presented the roadway profile, the general consensus of the Board was that a letter from a registered surveyor certifying the points would be acceptable. After the meeting adjourned, Mr. Tower said he asked some Board members what their position was because they had taken no action. He said one member had told him it was obvious that such a letter would be acceptable to the Board. Mr. Ellis said if a discussion was held after the meeting, nothing said was a Board decision. Mrs. Kalloch said she had not participated in any such discussion and Mr. Ellis said he did not recall doing so either. Mr. Tower said that between that meeting and the next Mr. Bickford and Mr. Cunningham made a presentation to the Board that was entirely contrary to the Board's apparent position. Then, he said, Mr. Bickford pointed out the ordinance section that stated the Board might request additional information from a third party. Mr. Remian said that occurred at a meeting and Mr. Tower agreed.

Mr. Tower now said that, by the terms of Cushing's Land Use ordinance and Note 7, he could build a roadway to Lot 26 whether it was through a RP zone or not. So, he postulated, what was the point of deciding if it was a RP zone? Mr. Ellis replied that a permitted use had to be established. Mr. Remian said it was a limited residential area, which required a permit to go through a RP area. Mr. Tower asked if Mr. Remian were referring to a building permit and the chairman said he meant a PB permit for the roadway. Mr. Tower's attorney, Cliff Goodall, said a permit was required only if there was no reasonable alternative to going through RP. Mr. Remian then said the PB had not determined if the area in question was RP, though he thought it appeared to be.

Aside from that, Mr. Tower asked, did the Board have any question that an area on proposed Lot 26 was zoned limited residential. The chairman said they did not. However, Mr. Ellis said, what was questionable was what part of it was buildable outside the zone, which required determining the boundaries of the RP zone. Mr. Tower displayed the site plan for Lot 26 and asked if the Board had any question that any part of that lot was in the RP zone. He stated that no part of it qualified for RP under the "steep slope" definition. Mr. Tower then continued to put forth his position, while asking the Board if it had questions on each point. He asked if there was a difference between a

“permissible” use and a “permitted” use within the ordinance and discussed the definitions of the two words. Mr. Tower stated his opinion that Lot 26 was an allowable residential use. He said he should get a building permit first, which would give him a “permitted” use. CEO Bickford clarified that it was actually a land use permit being discussed, not a building permit. Mr. Ellis said that in order to decide if there were an alternative location for the road, the Board would have to know what other access points were available, which would require knowing the parameters of the RP.

Mr. Tower said he would be submitting an application for a land use permit on the buildable area of Lot 26 and asked if the Board questioned that Lot 26, with the exception of the 75’ RP zone, was zoned limited residential. Mr. Remian said he believed it was limited residential. Mr. Bickford cautioned the Board that appearing on the town map as RP did not necessarily mean it was classified as such by slope; it could mean protected wetlands, protected for a species or some other state designation.

Mrs. Kalloch said she felt this discussion should be tabled until the Board had time to study it; she felt the Board had been caught by surprise and was not prepared. Mr. Remian said he was discussing this for clarification only and any decisions by the Board would be made at a publicly posted meeting. He suggested that accurate topographical data for Lot 26 would be helpful.

Mr. Kiskila asked Mr. Tower why he had started cutting the roadway and then stopped. Mr. Tower said he had started clearing trees because he felt it was not a RP zone, but Mr. Bickford had questioned that determination. Mr. Tower stated that he stopped clearing because: 1) he did not want any more disputes (which he called “a tempest in a teapot”) about cutting trees in RP, and 2) he had filed an amendment application with the DEP, which precluded any activity while it was under review. Mr. Kiskila asked if the DEP had decided if it was OK to cut or not. Mr. Tower said he had the DEP permit for adding Lot 26 in hand. Mr. Kiskila asked if it was approved by DEP and Mr. Tower said it was. Mr. Kiskila asked if that meant cutting the trees was OK. Mr. Tower said that was a separate issue with DEP and he did not know if it had been OK to cut, but he had the permit. Mr. Bickford confirmed that he had discussed with Mr. Tower his concerns and his inability to accurately determine if the cutting was being done in a RP zone. Mr. Tower had then agreed to stop cutting until it came before the Board. In turn, Mr. Bickford had agreed that he would not mention it to the Board so as not to affect the judgment of the members. The Board agreed that Mr. Bickford had not informed them.

Mr. Remian cut off discussion and Mr. Tower requested that he be on the next PB agenda. Mr. Remian told Mr. Tower to be sure his information was delivered to the Town Office on time.

Other Business: Mr. Ellis said that the last approved PB minutes on the website were November’s. The secretary said she had sent them to Mr. Knowles but he said he had not received them. The secretary said she would send the December through March minutes and would check to be sure Mr. Knowles received each month’s minutes.

There was a brief discussion of how the PB should move forward with its workshop sessions.

7. Adjournment: Mrs. Kalloch made a motion to adjourn at 8:40 pm.
Carried 5-0-0

Respectfully submitted,

Deborah E. Sealey